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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND	)	Case No.
PLUMBING, INC., individually and on	)	
behalf of all others similarly situated,	)	<b><u>CLASS ACTION</u></b>
	)	
Plaintiff,	)	<b>COMPLAINT FOR VIOLATIONS</b>
	)	<b>OF:</b>
vs.	)	
	)	1. NEGLIGENT VIOLATIONS OF
	)	THE TELEPHONE CONSUMER
	)	PROTECTION ACT [47 U.S.C.
ACE DESIGN & CONSTRUCTION,	)	§227 ET SEQ.]
INC.; DOES 1 through 10, inclusive,	)	2. WILLFUL VIOLATIONS OF THE
	)	TELEPHONE CONSUMER
	)	PROTECTION ACT [47 U.S.C.
Defendant(s).	)	§227 ET SEQ.]
	)	
	)	<b><u>DEMAND FOR JURY TRIAL</u></b>

Plaintiff, ABANTE ROOTER AND PLUMBING, INC. ("Plaintiff"), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

**NATURE OF THE CASE**

1. Plaintiff brings this action individually and on behalf of all others

1 similarly situated seeking damages and any other available legal or equitable  
2 remedies resulting from the illegal actions of ACE DESIGN & CONSTRUCTION,  
3 INC. (“Defendant”), in negligently, knowingly, and/or willfully contacting  
4 Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer  
5 Protection Act, 47 *U.S.C.* § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s  
6 privacy.

### 7 **JURISDICTION & VENUE**

8 2. Jurisdiction is proper under 28 *U.S.C.* § 1332(d)(2) because Plaintiff,  
9 a resident of California, seeks relief on behalf of a Class, which will result in at  
10 least one class member belonging to a different state than that of Defendant, a  
11 California corporation. Plaintiff also seeks up to \$1,500.00 in damages for each  
12 call in violation of the TCPA, which, when aggregated among a proposed class in  
13 the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
14 Therefore, both diversity jurisdiction and the damages threshold under the Class  
15 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

16 3. Venue is proper in the United States District Court for the Northern  
17 District of California pursuant to 28 *U.S.C.* § 1391(b) and because Defendant does  
18 business within the State of California and Plaintiff resides within the County of  
19 Alameda.

### 20 **PARTIES**

21 4. Plaintiff, ABANTE ROOTER AND PLUMBING, INC. (“Plaintiff”),  
22 is a corporation of the State of California, whose principal place of business is in  
23 the county of Alameda and is a “person” as defined by 47 *U.S.C.* § 153 (39).

24 5. Defendant, ACE DESIGN & CONSTRUCTION, INC.  
25 (“Defendant”), is a construction company specializing in hotel construction, and is  
26 a “person” as defined by 47 *U.S.C.* § 153 (39).

27 6. The above named Defendant, and its subsidiaries and agents, are  
28 collectively referred to as “Defendants.” The true names and capacities of the

1 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
2 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
3 names. Each of the Defendants designated herein as a DOE is legally responsible  
4 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
5 Complaint to reflect the true names and capacities of the DOE Defendants when  
6 such identities become known.

7 7. Plaintiff is informed and believes that at all relevant times, each and  
8 every Defendant was acting as an agent and/or employee of each of the other  
9 Defendants and was acting within the course and scope of said agency and/or  
10 employment with the full knowledge and consent of each of the other Defendants.  
11 Plaintiff is informed and believes that each of the acts and/or omissions complained  
12 of herein was made known to, and ratified by, each of the other Defendants.

### 13 **FACTUAL ALLEGATIONS**

14 8. Beginning in or around August of 2016, Defendant contacted Plaintiff  
15 on its cellular telephone ending in -7210, in an effort to sell or solicit its services.

16 9. Defendant called Plaintiff on its cellular telephone from phone  
17 numbers confirmed to belong to Defendant, including without limitation (702) 551-  
18 6089 and (702) 943-8954.

19 10. Defendant used an “automatic telephone dialing system”, as defined  
20 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to sell or solicit its  
21 business services.

22 11. Defendant’s calls constituted calls that were not for emergency  
23 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

24 12. During all relevant times, Defendant did not possess Plaintiff’s “prior  
25 express consent” to receive calls using an automatic telephone dialing system or an  
26 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §  
27 227(b)(1)(A).

28 13. In addition, Plaintiff requested numerous times that Defendant stop

1 calling Plaintiff. Despite such requests, Defendant continued to call Plaintiff's  
2 cellular telephone.

3 14. Defendant placed multiple calls soliciting its business to Plaintiff on  
4 its cellular telephones beginning on or about August of 2016 and continuing until  
5 on or about October 21, 2016.

6 15. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
7 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

8 16. Plaintiff received numerous solicitation calls from Defendant within a  
9 12-month period.

10 17. Plaintiff alleges upon information and belief, including without  
11 limitation Plaintiff's experiences as recounted herein, especially Plaintiff's  
12 experience of being called despite Defendant's lack of express consent to call  
13 Plaintiff, and that Defendant lacks reasonable policies and procedures to avoid the  
14 violations of the Telephone Consumer Protection act herein described.

### 15 CLASS ALLEGATIONS

16 18. Plaintiff brings this action individually and on behalf of all others  
17 similarly situated, as a member of two proposed class (hereafter, jointly, "The  
18 Classes") defined as follows:

19 19. The class concerning the ATDS claim for no prior express consent  
20 (hereafter "The ATDS Class") is defined as follows:

21 All persons within the United States who received any  
22 solicitation/telemarketing telephone calls from  
23 Defendant to said person's cellular telephone made  
24 through the use of any automatic telephone dialing  
25 system or an artificial or prerecorded voice and such  
26 person had not previously consented to receiving such  
27 calls within the four years prior to the filing of this  
28 Complaint

20. The class concerning the ATDS claim for revocation of consent, to the

1 extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined  
2 as follows:

3 All persons within the United States who received any  
4 solicitation/telemarketing telephone calls from Defendant  
5 to said person’s cellular telephone made through the use  
6 of any automatic telephone dialing system or an artificial  
7 or prerecorded voice and such person had revoked any  
8 prior consent to receive such calls prior to the calls within  
9 the four years prior to the filing of this Complaint

10 21. Plaintiff represents, and is a member of, The ATDS Class, consisting  
11 of all persons within the United States who received any solicitation telephone calls  
12 from Defendant to said person’s cellular telephone made through the use of any  
13 automatic telephone dialing system or an artificial or prerecorded voice and such  
14 person had not previously not provided their cellular telephone number to  
15 Defendant within the four years prior to the filing of this Complaint.

16 22. Plaintiff represents, and is a member of, The ATDS Revocation Class,  
17 consisting of all persons within the United States who received any  
18 solicitation/telemarketing calls from Defendant to paid person’s cellular telephone  
19 made through the use of any automatic telephone dialing system or an artificial or  
20 prerecorded voice and such person had revoked any prior express consent to receive  
21 such calls prior to the calls within the four years prior to the filing of this Complaint.

22 23. Defendant, its employees and agents are excluded from The Classes.  
23 Plaintiff does not know the number of members in The Classes, but believes the  
24 Classes members number in the thousands, if not more. Thus, this matter should  
25 be certified as a Class Action to assist in the expeditious litigation of the matter.

26 24. The Classes are so numerous that the individual joinder of all of its  
27 members is impractical. While the exact number and identities of The Classes  
28 members are unknown to Plaintiff at this time and can only be ascertained through  
appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
The Classes include thousands of members. Plaintiff alleges that The Classes

1 members may be ascertained by the records maintained by Defendant.

2 25. Plaintiff and members of The Classes were harmed by the acts of  
3 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
4 and The Classes members via their cellular telephones thereby causing Plaintiff  
5 and The Classes members to incur certain charges or reduced telephone time for  
6 which Plaintiff and The Classes members had previously paid by having to retrieve  
7 or administer messages left by Defendant during those illegal calls, and invading  
8 the privacy of said Plaintiff and The Class members.

9 1. Common questions of fact and law exist as to all members of The  
10 ATDS Class which predominate over any questions affecting only individual  
11 members of The ATDS Class. These common legal and factual questions, which  
12 do not vary between ATDS Class members, and which may be determined without  
13 reference to the individual circumstances of any ATDS Class members, include,  
14 but are not limited to, the following:

- 15 a. Whether, within the four years prior to the filing of this  
16 Complaint, Defendant made any telemarketing/solicitation call  
17 (other than a call made for emergency purposes or made with  
18 the prior express consent of the called party) to a ATDS Class  
19 member using any automatic telephone dialing system or any  
20 artificial or prerecorded voice to any telephone number  
21 assigned to a cellular telephone service;
- 22 b. Whether Plaintiff and the ATDS Class members were damaged  
23 thereby, and the extent of damages for such violation; and
- 24 c. Whether Defendant should be enjoined from engaging in such  
25 conduct in the future.

26 2. As a person that received numerous telemarketing/solicitation calls  
27 from Defendant using an automatic telephone dialing system or an artificial or  
28 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting

1 claims that are typical of The ATDS Class.

2 3. Common questions of fact and law exist as to all members of The  
3 ATDS Revocation Class which predominate over any questions affecting only  
4 individual members of The ATDS Revocation Class. These common legal and  
5 factual questions, which do not vary between ATDS Revocation Class members,  
6 and which may be determined without reference to the individual circumstances of  
7 any ATDS Revocation Class members, include, but are not limited to, the  
8 following:

- 9 a. Whether, within the four years prior to the filing of this  
10 Complaint, Defendant made any telemarketing/solicitation call  
11 (other than a call made for emergency purposes or made with  
12 the prior express consent of the called party) to an ATDS  
13 Revocation Class member, who had revoked any prior express  
14 consent to be called using an ATDS, using any automatic  
15 telephone dialing system or any artificial or prerecorded voice  
16 to any telephone number assigned to a cellular telephone  
17 service;
- 18 b. Whether Plaintiff and the ATDS Revocation Class members  
19 were damaged thereby, and the extent of damages for such  
20 violation; and
- 21 c. Whether Defendant and their agents should be enjoined from  
22 engaging in such conduct in the future.

23 26. As a person that received numerous telemarketing/solicitation calls  
24 from Defendant using an automatic telephone dialing system or an artificial or  
25 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff  
26 is asserting claims that are typical of The ATDS Revocation Class.

27 27. Plaintiff will fairly and adequately protect the interests of the members  
28 of The Class. Plaintiff has retained attorneys experienced in the prosecution of

1 class actions.

2 28. A class action is superior to other available methods of fair and  
 3 efficient adjudication of this controversy, since individual litigation of the claims  
 4 of all of The Classes members is impracticable. Even if all of the Classes member  
 5 could afford individual litigation, the court system could not. It would be unduly  
 6 burdensome to the courts in which individual litigation of numerous issues would  
 7 proceed. Individualized litigation would also present the potential for varying,  
 8 inconsistent, or contradictory judgments and would magnify the delay and expense  
 9 to all parties and to the court system resulting from multiple trials of the same  
 10 complex factual issues. By contrast, the conduct of this action as a class action  
 11 presents fewer management difficulties, conserves the resources of the parties and  
 12 of the court system, and protects the rights of each Classes members.

13 29. The prosecution of separate actions by individual Classes members  
 14 would create a risk of adjudications with respect to them that would, as a practical  
 15 matter, be dispositive of the interests of the other Classes members not parties to  
 16 such adjudications or that would substantially impair or impede the ability of such  
 17 non-party Classes members to protect their interests.

18 30. Defendant has acted or refused to act in respects generally applicable  
 19 to The Classes, thereby making appropriate final and injunctive relief with regard  
 20 to the members of The Classes as a whole.

### 21 **FIRST CAUSE OF ACTION**

#### 22 **Negligent Violations of the Telephone Consumer Protection Act 23 47 U.S.C. §227(b).**

#### 24 **On Behalf of the ATDS Class and ATDS Revocation Class**

25 4. Plaintiff repeats and incorporates by reference into this cause of action  
 26 the allegations set forth above at Paragraphs 1-40.

27 5. The foregoing acts and omissions of Defendant constitute numerous  
 28 and multiple negligent violations of the TCPA, including but not limited to each  
 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular

1 47 U.S.C. § 227 (b)(1)(A).

2 6. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b),  
3 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory  
4 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

5 7. Plaintiff and the ATDS Class and the ATDS Revocation Class  
6 members are also entitled to and seek injunctive relief prohibiting such conduct in  
7 the future.

8 **SECOND CAUSE OF ACTION**

9 **Knowing and/or Willful Violations of the Telephone Consumer Protection  
10 Act**

11 **47 U.S.C. §227(b)**

12 **On Behalf of the ATDS Class and the ATDS Revocation Class**

13 8. Plaintiff repeats and incorporates by reference into this cause of action  
14 the allegations set forth above at Paragraphs 1-40.

15 9. The foregoing acts and omissions of Defendant constitute numerous  
16 and multiple knowing and/or willful violations of the TCPA, including but not  
17 limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b),  
18 and in particular 47 U.S.C. § 227 (b)(1)(A).

19 10. As a result of Defendant's knowing and/or willful violations of 47  
20 U.S.C. § 227(b), Plaintiff and the ATDS Class and the ATDS Revocation Class  
21 members are entitled an award of \$1,500.00 in statutory damages, for each and  
22 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

23 31. Plaintiff and the Class members are also entitled to and seek  
24 injunctive relief prohibiting such conduct in the future.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

27 **FIRST CAUSE OF ACTION**

28 **Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

- As a result of Defendant's negligent violations of 47 U.S.C.

§227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).

- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

### **SECOND CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection Act 47 U.S.C. §227(b)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and the ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

### **JURY DEMAND**

32. Pursuant to her rights under the Seventh Amendment to the United States Constitution, Plaintiff demands a jury on all issues so triable.

Respectfully Submitted this 9th day of November, 2018.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff